

**MISSOURI STATE AUDITOR'S OFFICE  
FISCAL NOTE (16-013)**

**Subject**

Initiative petition from Nicholas Raines regarding a proposed constitutional amendment to Article IV of the Constitution of Missouri. (Received December 26, 2014)

**Date**

January 15, 2015

**Description**

This proposal would amend Article IV of the Constitution of Missouri.

The amendment is to be voted on in November 2016.

**Public comments and other input**

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education**, the **Department of Health and Senior Services**, the **Department of Insurance**, **Financial Institutions and Professional Registration**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, **Kansas City Board of Police Commissioners**, and **St. Louis Board of Police Commissioners**.

## Assumptions

Officials from the **Attorney General's office** indicated they assume that any potential costs arising from the adoption of this proposal can be absorbed with existing resources.

Officials from the **Department of Economic Development** indicated no impact to their department.

Officials from the **Department of Elementary and Secondary Education** indicated this proposal does not impact their department or local schools.

Officials from the **Department of Higher Education** indicated they have determined this initiative petition would not have a direct fiscal impact on their department.

Officials from the **Department of Health and Senior Services** indicated the total estimated costs for salaries, fringe benefits, and expense and equipment will be \$52,433 for fiscal year 2016, \$79,536 for fiscal year 2017, and \$80,530 for fiscal year 2018.

Rental space would be needed for one new FTE located in Jefferson City: 1 FTE x 200 sq ft/FTE x \$16.75/sq. ft. = \$3,350.

The proposed language could create new classes of small businesses (marijuana manufacturers and retailers).

Proposed Article IV, Section 54.2.(a) defines cannabis and includes any derivative, concentrate, and extract. While not explicitly stated, for fiscal note purposes the Department of Health and Senior Services (DHSS) assumes these could be added to food products. Sections 196.010 through 196.298, RSMo gives the DHSS responsibility for the regulation of food to include such duties as ensuring food safety, sanitation, and proper labeling, etc. DHSS would have additional responsibility to assure that facilities manufacturing foods containing marijuana and marijuana products are regulated the same as other food manufacturers.

DHSS assumes that manufacturers will have “one stop shops” that will include the retail portion on the same grounds as the manufacturing plant where marijuana products will be manufactured. DHSS estimates that there may be as many as 150 manufacturing/retail facilities throughout the state. Since the local public health agencies assume responsibility for inspecting retail food establishments, DHSS would not have to incur additional costs for these inspections. DHSS would have to inspect the manufacturing portion of the facility. DHSS would require one field inspector to inspect the manufacturing plants (Environmental Public Health Specialist IV, A27, Step G, \$43,056).

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact. However, the impact on the demand for substance use disorder treatment is unknown. Their department sees the legalization of marijuana as a broader public health issue, especially for children.

Officials from the **Department of Natural Resources** indicated their department would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated:

The petition proposes to legalize the production, trafficking, sale, distribution and consumption of marijuana and the expungement of all criminal records for convictions related to marijuana as a controlled substance. The petition is similar to petition 16-009 except that there is no exemption for offenders or purchasers who are 21 and under.

The response to 16-009 is modified to include offenders who were 21 or younger at the time of the offense. Approximately 20% of offenders received by the Department of Corrections for marijuana only drug offenses were 21 or younger.

The legalization of marijuana will impact the department in three ways:

1. It will discharge offenders with convictions for marijuana from incarceration or field supervision if the marijuana convictions are the only convictions the offenders are serving.
2. It will reduce the number of offenders being sentenced and received by the Department of Corrections (DOC) for prison or probation sentences.
3. It will require administrative actions by DOC staff to re-calculate sentences, risk assessments, parole release dates and custody levels for those offenders who have had marijuana convictions expunged.

The estimate of the number of offenders who will be impacted by the legalization of marijuana can be calculated from the sentencing records maintained by the DOC but with a significant proviso. Most offenders sentenced for drug offenses in Missouri are sentenced for the production, trafficking, sale, distribution or possession of a controlled substance and the drug type is not part of the offense. In some cases the drug type is known because the drug type is included in the NCIC code or is included in the offense description. Although the time served calculations of the bill is based upon those cases where the drug type is known the impact has to include an estimate of the drug offenders where the drug type is not known. As only 32% of drug offenses include the drug type the expansion factor is significant (3.17).

## **1. The discharge of offenders with only a conviction for marijuana**

On December 5, 2014 there were:

- a) 143 incarcerated offenders and after applying the expansion factor of 3.17 it is estimated that 451 offenders will be eligible to be discharged immediately.

- b) 1,319 offenders on probation or parole and after applying the expansion factor of 3.17 it is estimated that 4,180 offenders will be discharged from field supervision.

There may be other offenders who, after the expungement of the marijuana offenses, may be eligible for immediate discharge or have their release date advanced but no estimate has been for these offenders. The reduction in time served would be significant if the marijuana drug offense was being served consecutively but most drug offenses are served consecutively and are eligible for parole. Drug offenders do not serve minimum prison terms for prior incarcerations with the DOC.

## **2. The reduction of new admissions and new probation cases**

In FY14 there were:

- a) 110 offenders admitted to prison to serve a marijuana drug offense and had no other offense. After the expansion factor of 3.17 it is estimated that 348 offenders were admitted in FY14. Using time served statistics from offenders released in FY14 for marijuana only offenses it is estimated that the average time served was 0.81 years. The annual reduction in the institutional population is estimated at 282 ( $348 * 0.81$  years) and the reduction will begin in the first year following enactment of the bill.
- b) 501 offenders were placed on probation for only a marijuana drug offense. After applying the expansion factor it is estimated that there were 1,589 offenders placed on probation for a marijuana drug offense.

## **3. Administrative Actions**

Administrative actions are required to account for the expungement of marijuana convictions and the re-calculation of release dates and risk assessments. No estimate is made for these actions but it could be substantial because marijuana only convictions are not readily available in the DOC offender database. The petition states that the Attorney General would publish a list of records to be expunged. Also note that this petition does not call for automatic expungement. The offender has to petition the court which will complicate the process and calculation of expungement cost.

## **Impact Summary**

In the year following the enactment of the bill there will be offenders discharged and fewer offenders received by the DOC. Because of the average stay is less than one year both impacts will occur in the first year. After the first year the prison and probation populations will stabilize at a new lower level and will continue through the 10 years of the budget forecast.

**Impact based upon the assumption of equal distribution for drug offenses when the drug type is not known**

	Prison			Field		
	Discharged	Fewer Admissions	Total	Discharged	Fewer Probations	Total
FY16	451	348	799	4,180	1,589	5,769

The estimates are based upon the assumption that the distribution of drugs offenses when drug is known is similar to the distribution of drugs when the drug type is not known. A minimum impact of the legalization of marijuana is based upon only the convictions that are known to be for marijuana and no account is taken of the drug offenses for which the drug type is not known. The reduction in the population from fewer admissions is admissions (110) multiplied by the average stay (0.81 years) = 89.

**Minimum Impact-excluding drug offenses when the drug type is not known**

	Prison			Field		
	Discharged	Fewer Admissions	Total	Discharged	Fewer Probations	Total
FY16	143	89	232	1,319	501	1,820

These are the DOC direct offender costs for either incarceration (FY14 average of \$16.725 per offender, per day, or an annual cost of \$6,105 per inmate) or for supervision provided by the Board of Probation and Parole (FY14 average of \$6.72 per offender, per day or an annual cost of \$2,453 per offender). It is assumed that the least amount of individuals affected would be 232 incarcerated offenders and 1,820 field supervised offenders and at most it would affect 799 incarcerated offenders and 5,769 filed supervised offenders for an estimated cost avoidance of \$5,880,820 to \$19,029,252 in FY16. However, this does not necessarily mean there will be a net reduction in the DOC budget. The prison population has been steadily increasing over the past few years due to many other factors not related to marijuana offenses.

Officials from the **Department of Labor and Industrial Relations** indicated no fiscal impact to their department.

Officials from the **Department of Revenue** indicated this initiative petition will have no fiscal impact on their department.

Officials from the **Department of Public Safety - Office of the Director** indicated they see no fiscal impact.

Division of Alcohol and Tobacco Control (ATC) indicated this initiative petition does not have a licensing aspect, nor does the division have any enforcement duties as a result of this petition, therefore there is no fiscal impact to ATC.

Missouri State Highway Patrol (MSHP) indicated the total estimated costs for salaries, fringe benefits, and expense and equipment will be \$861,969 for fiscal year 2016, \$1,044,925 for fiscal year 2017, and \$1,055,592 for fiscal year 2018.

In 1924, the United States Justice Department FBI began building a national system of criminal records for the protection of citizens through the detection and apprehension of criminals. The Omnibus Crime Control and Safe Streets Act of 1968 established minimum requirements for the management of criminal record systems. The Kennedy Amendment in the Crime Control Act of 1973 requires all criminal history information collected, maintained and/or disseminated by state and local agencies to be complete, secure and available for review and challenged by record subjects. It further stipulates that information must be used only for law enforcement and other specifically authorized purposes. The Anti-Drug Abuse Act of 1988 requires a system for the immediate and accurate identification of felons who attempt to purchase firearms. The Brady Handgun Violence Prevention Act of 1993, the National Child Prevention Act of 1993, the National Stalker and Domestic Violence Reduction Program of the Violence Against Women Act, the National Instant Criminal Background Check System/Crime Identification Technology Act of 1998, the NICS Improvement Amendment Act, the Jacob Wetterling Crimes Against Children Act, and the Sexually Violent Offender Registration Act (Megan's Law). These supporting bills are all programs that are dependent upon a complete, accurate and timely criminal history database in the state.

This proposed legislation would also impact the determination of qualified individuals relating to positions of public trust (i.e., persons caring for children, the elderly or the disabled). It would adversely impact the criminal justice system and the ability for the criminal justice system to adequately protect the citizens of Missouri from convicted criminals.

Article IV, Section 54. 6. (b) states that within 60 days of the passage of this Act, the Attorney General shall develop and make available to the public a legal document ordering the immediate destruction of all cannabis-related non-violent civil and criminal records in Missouri and for any offense covered by this amendment which is no longer illegal in the state of Missouri under this Act. This document shall be distributed to all Circuit Court clerks within the state.

Article IV, Section 54. 6. (b) conflicts with the expungement process in Chapter 61. Section 610.122 and 610.123 address the requirements and processes for expungements. This proposed amendment does not address these state statutes and would conflict with these laws. Currently, no record can be expunged if the individual of the arrest has prior or subsequent misdemeanor or felony convictions, the subject received a suspended imposition of sentence for the arrest, or the subject received a conviction.

Additionally, certain misdemeanor and municipal offenses (i.e., drug offenses under Chapter 195) can be enhanced if it is a second or third offense. It would be difficult to enhance the offense per 558.016 if previous convictions were expunged.

The language in this initiative petition requiring courts to order the immediate expungement of civil and criminal records pertaining to all non-violent cannabis only offenses as well as the Missouri Attorney General to develop and make available to the public a legal document ordering the immediate destruction of all cannabis-related non-violent civil and criminal records in Missouri appears to be ambiguous. If passage of this constitutional amendment were to occur based on this initiative petition, are Missouri courts immediately mandated to order the immediate expungement of records noted in the petition, or are individuals required to petition courts utilizing the document created by the Missouri Attorney General? Furthermore, is the language pertaining to the immediate destruction of records intended for agencies to blindly expunge records without any review whatsoever? The meaning of the term “non-violent” and “cannabis only offenses” is unclear. What is a “non-violent” offense and does possession of drug paraphernalia fall within the realm of a “cannabis only offense”? Definitions for terms “immediate, non-violent, and cannabis only offense” would be helpful.

The following language is proposed to provide for the collection of a fee to offset the costs of the expungement:

43.530. 1. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than nine dollars per request for criminal history record information not based on a fingerprint search. In each year beginning on or after January 1, 2010, the superintendent may increase the fee paid by requesting entities by an amount not to exceed one dollar per year, however, under no circumstance shall the fee paid by requesting entities exceed fifteen dollars per request.

2. For each request requiring the payment of a fee received by the central repository, the requesting entity shall pay a fee of not more than twenty dollars per request for criminal history record information based on a fingerprint search, unless the request is required under the provisions of subdivision (6) of section 210.481, section 210.487, or section 571.101, in which case the fee shall be fourteen dollars.

3. A request made under subsections 1 and 2 of this section shall be limited to check and search on one individual. Each request shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the highway patrol. The highway patrol may establish procedures for receiving requests for criminal history record information for classification and search for fingerprints, from courts and other entities, and for the payment of such requests. There is hereby established by the treasurer of the state of Missouri a fund to be entitled as the "Criminal Record System Fund". Notwithstanding the provisions of section 33.080 to the contrary, if the moneys collected and deposited into this fund are not totally expended annually for the purposes set forth in sections 43.500 to 43.543, the unexpended moneys in such fund shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

4. For all petitions for expungement under the provisions of Chapter 610, Section 577.054, or any other created expungement requirement under statute, excluding Section

610.122, the applicant shall pay a fee of seventy-fifty dollars per arrest date listed on the petition. Each petition shall be accompanied by a check, warrant, voucher, money order, or electronic payment payable to the state of Missouri-criminal record system or payment shall be made in a manner approved by the highway patrol. For expungements that require removal from the Traffic Arrest System twenty dollars of the seventy-five dollar fee will be deposited in the Highway Patrol Traffic Records Fund.

This proposal will affect the Attorney General's Office and all state courts.

The proposed legislation would add one new section to the state of Missouri Constitution to be known as Article IV, Section 54 which would require cannabis to be immediately removed from the Missouri Revised Statutes list of controlled substances and no longer listed among Missouri's drug schedules. The petition calls for Missouri courts to order the immediate expungement of civil and criminal records pertaining to all non-violent cannabis-only offenses.

The Criminal Justice Information Services Division (CJIS) states that there are currently 315,063 arrest charges in the Central Repository that qualify for expungement under this Initiative Petition to amend Article IV, Section 54 of the Constitution. With no specific statutory reference into how these expungements would be handled or the process by which they would be expunged, it is difficult, at best, to estimate the amount of FTE's required by the CJIS Division to carry out the expungements. The current expungement process, pursuant to Chapter 610, takes approximately 90 minutes to process. One FTE can handle 1,237 expungements per year. Conservatively, at least five FTE's would be required to initially handle the expungements created by this amendment based on no clear expungement process. Clearly, if a large number of these expungements were to be granted with even 5 FTE's, the backlog would compound greatly to the point it may take several years to catch up.

$1 \text{ FTE} = 1,856 \text{ hours (average work hours per year)} \times 60 \text{ minutes per hour} = 111,360 \text{ minutes per year.}$

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 90 minutes. Therefore, one FTE can handle  $1,237 \text{ expungements per year} = 111,360 / 90$ .

These FTE's (CJIS Technicians) would be necessary to process all expungement requests, review criminal history records, contact any agency associated with the arrests or convictions, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE at \$53,702 and the ability of that employee to process 1,237 expungements per year, the cost alone per expungement is  $\$53,702 \div 1,237 = \$43.41$ . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories, as well as contacting of the various agencies associated with the arrests. In researching other states with similar expungement requirements, they all



charge a fee to offset the cost of the time required to process the expungements. Their fees ranged from \$50 to \$450 per petition per arrest date.

These FTE's will most likely be 2nd and 3rd shift employees so they would not require any equipment. However, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges. If any FTE were placed on the 1st shift, standard equipment would be required at a one-time cost of \$6,094 per FTE.

5 CJIS Technicians (\$1,196.50 x 24)	\$143,580
Office Equipment/HW/SW	\$6,094

#### RECURRING COSTS

Phone Charges per FTE	\$350
Office Supplies per FTE	\$300

The calculations below include expungement of records pertaining to arrests completed by the Highway Patrol for violation of offenses under Chapter 195, RSMo, and Missouri Charge Codes with NCIC modifiers 60-64. These modifiers pertain to marijuana-related offenses.

The Patrol Records Division (PRD) estimates there are currently 85,439 arrests in the Patrol's Traffic Arrest System (TAS) that would be eligible for expungement. Considering this initiative petition calls for the courts to order the immediate expungement of civil and criminal records pertaining to all non-violent cannabis-only offenses and there is no language requiring individuals to petition Missouri courts for the expungement of these records, it is assumed a majority of the 85,439 records would require immediate expungement. The Highway Patrol would follow the current record expungement protocol noted below versus blindly expunging records.

1 FTE = 1,856 hours (average work hours per year) x 60 minutes per hour = 111,360 minutes per year.

The current average time per petition to log, process, research, review, create related correspondences, and to expunge the information when the order is received is 45 minutes. Therefore, one FTE can handle 2,475 expungements per year = 111,360 / 45.

With the current estimated potential of 85,439 petitions for expungement upon enactment of this legislation, the following percentages of persons actually requesting an expungement will directly relate to the number of FTE's required:

10% =  $85,439 \times .10 = 8,844 / 2,475 = 3.45$  FTE's  
20% =  $85,439 \times .20 = 17,088 / 2,475 = 6.9$  FTE's  
50% =  $85,439 \times .50 = 42,718 / 2,475 = 17.26$  FTE's  
100% =  $85,439 / 2,475 = 34.52$  FTE's

It is realistic to assume a significant number of these individuals will file a petition to expunge these records. It would be reasonable to add 17 FTE's and address any backlog that may occur. This FTE's (Quality Control Clerks) would be necessary to process all expungement requests, review records, contact agencies, and collect the necessary data for the court orders.

Based on the average yearly salary and benefit rate per FTE of \$44,209 and the ability of that employee to process 2,475 expungements per year, the cost per expungement is  $\$44,209 \div 2,475 = \$17.86$ . It is suggested that a fee, similar to the criminal history background check fee, be implemented for the cost of researching and reviewing the criminal histories.

PRD would have to initiate the use of work shifts (sharing work stations) in order to physically accommodate 17 FTE's needed to process 50% of the possible expungements. The division currently has workspace for 39 employees, not including supervisors. Employees sharing cubicles would not require additional equipment; however, there would be recurring costs of \$650 per year per FTE for office supplies and phone charges.

17 Quality Control Clerk (\$985 x 24)	\$401,880
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#### RECURRING COSTS

Phone Charges	\$350
Office Supplies	\$300

Officials from the **Department of Social Services** indicated no fiscal impact on their department.

Officials from the **Governor's Office** indicated there should be no fiscal impact to their office.

Officials from the **Department of Conservation** indicated that no adverse fiscal impact to their department would be expected as a result of this proposal.

Officials from the **Office of Administration** indicated:

This petition:

- Requires the state to remove cannabis from the statutory list of controlled substances and prohibits it from being listed among Missouri drug schedules.
- States that the following shall not be an offense under Missouri law:
  - Possession for personal or medical use
  - Cultivating for personal or medical use
  - Cultivating, harvesting, processing, manufacturing, packaging, distributing, transferring, displaying or possession cannabis,

cannabis accessories, and cannabis products for commercial purposes provided the person has a current, applicable license to operate the commercial facility.

- Selling cannabis, cannabis accessories, and cannabis products.
- Leasing or otherwise allowing the use of property for cultivating, processing, manufacturing, packaging, distributing, transferring and selling cannabis.
- Using or possessing cannabis cannot be grounds for “driving under the influence”
- Exempts medical cannabis from taxation provided the patient has a physician’s recommendation for its use.
- Physicians and veterinarians cannot be penalized or restricted for recommending cannabis for medical purposes to a person or creature under their care.
- Licensed physicians may not be subject to any professional licensing review or hearing as a result of recommending or approving medical cannabis therapy.
- Medical care, including organ transplants, shall not be restricted based on a person’s use of cannabis.
- Upon passage all persons incarcerated for non-violent cannabis-only offenses shall be released and the civil and criminal records must be purged.
- No Missouri law enforcement personnel or state funds shall be used to enforce federal cannabis laws involving acts which are no longer illegal under this amendment. Further, the Amendment states that the people of Missouri repudiate and challenge federal cannabis prohibitions that conflict with this Act.
- The penalty for impeding the lawful exercise of these provisions is guilty of a Class A misdemeanor.
- Cannabis farmers, manufacturers, processors, and distributes shall not be treated any differently relating to zoning, licensing or any way contrary to that which is relative to any other commercial or agricultural farmer, manufacturer, processor or distributor.
- Provisions of this amendment are severable and self-executing and shall supersede conflicting city, county, state or federal statutory, local charter, ordinance or resolution.
- The effective date is January 31<sup>st</sup> after the election.

### Summary of Fiscal Impact

The Department of Corrections would have savings (unknown amount) due to fewer people incarcerated and under the supervision of Probation and Parole. The Department of Corrections and the Office of the Court Administrator would incur costs (amount unknown) due to the expungement of records and release of offenders' provisions in the act. The Department of Revenue could also see increased costs resulting from the collection of excise and sales taxes and compliance with those taxes.

Budget and Planning (B&P) assumes that the retail sale of cannabis, cannabis accessories, and cannabis products would be subject to state sales tax, therefore increasing the collections to the state's general revenue fund, the School District Trust Fund, the Conservation Commission Fund, the State Park Sales Tax Fund, and the Soil and Water Sales Tax Fund. B&P does not have the data available to provide an estimate.

Total State Revenue could be impacted to the extent the fines collected are deposited in the state treasury.

Officials from the **Office of State Courts Administrator** indicated:

The proposed Initiative Petitions, 16-013, would create a new section of the Missouri Constitution to be known as Article IV, Section 54. This section would allow citizens over the age of twenty-one years to have the right to engage in the production, sale, distribution and consumption of marijuana and the manufacture of goods from hemp, subject to reasonable regulations adopted by the state pursuant to this section.

During the past five years (2009 – 2013) there has been an average of 3,100 Associate Circuit Division marijuana related charges disposed statewide by guilty outcome and 8,256 Circuit Division charges disposed by guilty outcome. The office is unable to determine what number of these charges were for someone over the age of twenty-one.

The following Criminal Court Costs would be affected by this petition:

<b>Criminal Court Costs</b>		
<b>Felony Case Costs</b>	<b>Amount of Cost</b>	<b>Disburse to State/County</b>
Basic Civil Legal Services Fund surcharge	\$10.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$45.00	State of Missouri - General Revenue \$36, County \$9
County Fee	\$75.00	County
Court Automation Fund Fee	\$7.00	State of Missouri -Statewide Court Automation Fund
Court Reporter fee (All Circuit Division Cases)	\$15.00	State of Missouri - General Revenue

Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$30.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Head Injury Fund
Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund
Peace Officer Standards & Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	State of Missouri - Prosecuting Attorney Training Fund
Sheriffs' Fee	\$75.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement Fund
Spinal Cord Injury Fund surcharge	<u>\$2.00</u>	State of Missouri - Spinal Cord Injury Fund
<b>Total</b>	<b>\$279.50</b>	
<b>Misdemeanor Case Costs</b>		
Basic Civil Legal Services Fund surcharge	\$8.00	State of Missouri - Basic Civil Legal Services Fund
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
County Fee	\$25.00	County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
DNA Profiling Analysis Fund surcharge	\$15.00	State of Missouri - DNA Profiling Analysis Fund
Brain Injury Fund surcharge	\$2.00	State of Missouri - Brain Injury Fund
Independent Living Center Fund surcharge	\$1.00	State of Missouri - Independent Living Center Fund
Motorcycle Safety Trust Fund surcharge	\$1.00	State of Missouri - Motorcycle Safety Trust Fund

Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Prosecuting Attorney and Circuit Attorneys' Retirement Fund	\$4.00	Pros. Attorney Retirement Fund
Prosecuting Attorney Training Fund surcharge	\$1.00	\$0.50 State of Missouri / \$0.50 County
Sheriffs' fee	\$10.00	County
Sheriffs' Retirement Fund surcharge (except 21st Circuit)	\$3.00	Sheriffs' Retirement fund
Spinal Cord Injury Fund Surcharge	\$2.00	State of Missouri - Spinal Cord Injury Fund
<b>Total</b>	<b>\$102.50</b>	
<b>Municipal Case (Filed in Associate Division) Costs</b>		
Clerk Fee	\$15.00	\$12 State of Missouri / \$3 County
Court Automation Fund Fee	\$7.00	State of Missouri - Court Automation Fund
Crime Victims' Compensation Fund surcharge	\$7.50	State of Missouri - Crime Victims' Compensation Fund
Peace Officer Standards and Training (POST) Commission surcharge	\$1.00	State of Missouri - Peace Officer Standards & Training Fund
Sheriffs' Retirement Fund surcharge	\$3.00	Sheriffs' Retirement Fund
<b>Total</b>	<b>\$33.50</b>	
<b>Criminal Costs Not Included Above</b>		
Drug Testing by a State Lab	\$150.00	State of Missouri
Drug Testing by a Private Lab	Actual Costs	County Reimbursement
Law Enforcement Arrest Costs:		
Highway Patrol		Amt. Approved by the Court
Local (County)		Amt. Approved by the Court
Municipal		Amt. Approved by the Court

The decrease in the court fees, depending on the number of cases, will result in an unknown loss to the courts.

The office also assumes there will be an unknown decrease in caseload for the courts because the courts will no longer process these cases; however, at this time the office is unable to calculate the decrease.

Any significant increase or decrease will be reflected in future budget requests.

Officials from the **Secretary of State's office** indicated their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. Funding for this item is adjusted each year depending upon the election cycle with \$1.3 million historically appropriated in odd numbered fiscal years and \$100,000 appropriated in even numbered fiscal years to meet these requirements. Through FY 2013, the appropriation had historically been an estimated appropriation because the final cost is dependent upon the number of ballot measures approved by the General Assembly and the initiative petitions certified for the ballot. In FY 2013, at the August and November elections, there were 5 statewide Constitutional Amendments or ballot propositions that cost \$2.17 million to publish (an average of \$434,000 per issue). In FY 2015, the General Assembly changed the appropriation so that it was no longer an estimated appropriation and the Secretary of State's Office was appropriated \$1.19 million to publish the full text of the measures. Due to this reduced funding, the Secretary of State's office reduced the scope of the publication of these measures. In FY 2015, at the August and November elections, there were 9 statewide Constitutional Amendments or ballot propositions that cost \$1.1 million to publish (an average of \$122,000 per issue). Despite the FY 2015 reduction, the Secretary of State's office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated:

Initiative Petition 16-013 regarding the legalization of marijuana will have substantial impact on the State Public Defender System.

If passed, this constitutional amendment would have a positive impact on the workload of the Missouri State Public Defender (MSPD), since for persons 21 years of age or older it generally would make legal the production, sale, distribution, and consumption of marijuana, offenses that the Public Defender currently uses resources to defend and no longer would need to.

The exact positive impact is difficult to predict because the MSPD tracks cases by statutory offense and most drug offenses are not limited to marijuana;

However, this is known in terms of relevant adult cases opened for FY2014:

-- Misdemeanor Possession of Marijuana, Section 195.202 RSMo: **1,153** misdemeanor cases.

-- Other drug offenses that might involve marijuana: 195.202 (felonies), 195.211, 195.214, 195.218, 195.222, 195.223, 195.226, 195.233, 195.235, 195.241, and 195.242: 10,630 cases (2,741 A/B felonies, 7,186 C/D felonies, 703 misdemeanors). As mentioned, the MSPD does not track these cases by type of drug. However, if one were to assume that 25% of them are marijuana, then that would be 2,658 cases (685 A/B felonies, 1,797 C/D felonies, 176 misdemeanors). And as mentioned, the MSPD does not have readily available how many of these involved clients 21 years of age or older. However, if one were to assume that 75% of those 2,658 cases involved such clients, then that would be **1,993 cases (514 A/B felonies, 1,347 C/D felonies, 132 misdemeanors)**.

**1,153** misdemeanor cases plus **1,993** cases (514 A/B felonies, 1,347 C/D felonies, 132 misdemeanors) totals **3,146 cases (514 A/B felonies, 1,347 C/D felonies, 1285 misdemeanor cases)**.

In *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, the relevant workload standards are: A/B felonies, 47.6 hours per case; C/D felonies, 25.0 hours per case; and misdemeanors, 11.7 hours per case. (The workload standards include only case related tasks over which an attorney has some control (they exclude, for example, in court and travel time) and thereby reflect a conservative estimate.)

Applying those workload standards to the **3,146** cases, those cases require 73,175.50 attorney hours. With 2,080 hours per attorney available each year, that represents the work of 35.18 attorneys.

In addition, probation violation caseload would be reduced. In FY2014, MSPD opened 53,187 new adult offenses plus 17,226 probation violations, i.e., 1 probation violation for approximately every 0.3238 new offenses. Applying that same percentage to marijuana cases, then in reducing marijuana caseload by 3,146 new cases, the MSPD also would reduce probation violation caseload by 1,018 cases.

In *The Missouri Project*, the workload standard for probation violations is 9.8 hours per case. Thus the reduction in probation violations by 1,018 cases would represent a savings of 9,976 attorney hours. With 2,080 hours per attorney available each year, that represents the work of another 4.80 attorneys.

35.18 attorneys plus 4.80 attorneys totals **39.98 attorneys**.



While in theory the MSPD might also handle fewer appeals of guilty verdicts after trial, the fact is that only a very small percentage of MSPD cases proceed to trial and it's likely that only a small percentage of those cases are appeals from marijuana convictions. Therefore this minimal positive impact is not being taken into account in this estimate.

The savings of the workload of 40 attorneys would be offset some in that the constitutional amendment would allow regulatory laws, including licensing, and presumably violation of those regulatory laws would be made to be criminal offenses eligible for Public Defender representation. However, for this fiscal estimate, because it is impossible at this juncture to predict how many cases this would add to the Public Defender caseload, that offset will be ignored.

In summary, though the exact positive impact is difficult to predict because the MSPD tracks cases by statutory offense and most drug offenses are not limited to marijuana, if the above assumptions are made then this constitutional amendment would save the Public Defender the work of approximately 40 attorneys.

However, the Missouri State Public Defender already is significantly understaffed by 291 attorneys under the workload standards developed in *The Missouri Project*. (The 291 attorneys is a conservative estimate of the under-staffing in that it assumes the MSPD contract all conflicts to private attorneys, which the MSPD is not able to do for budgetary reasons).

Therefore, despite the positive impact on the workload of the Missouri State Public Defender, because the office is already understaffed that savings in attorney time would not allow the Public Defender to reduce its workforce and therefore would not translate into an actual cost savings. However it does reduce by the cost of 40 attorneys how much money needs to be added to the MSPD budget in order to meet *The Missouri Project's* workload standards.

Officials from the **State Treasurer's office** indicated no impact to their office.

Officials from the **City of Columbia** indicated while hard to determine, there could be some local administrative costs associated with researching, expunging or destroying cannabis-related records.

Officials from the **City of St. Joseph** indicated the city may gain some minor revenue from any applicable business licenses. Otherwise the form of this initiative would mean little impact to revenues or expenditures.

Officials from the **Cape Girardeau 63 School District** indicated they are unaware of any cost or savings due to this measure.

Officials from **Metropolitan Community College** indicated this would have a positive impact on their revenue as it provides additional funding for education.

Officials from **University of Missouri** indicated this initiative petition would not have a significant fiscal impact on their university.

The State Auditor's office did not receive a response from the **Department of Agriculture**, the **Missouri House of Representatives**, the **Department of Transportation**, the **Missouri Senate**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County Legislators**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Hannibal 60 School District**, **State Technical College of Missouri**, **St. Louis Community College**, **Kansas City Board of Police Commissioners**, and **St. Louis Board of Police Commissioners**.

### **Fiscal Note Summary**

State government expects annual operating costs starting at \$900,000 and an unknown increase in public health costs, possibly offset by unknown savings in the criminal justice system. Possible increased sales tax revenue is unknown. The fiscal impact to local governments is unknown.